

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN A. PARKER,

Plaintiff,

v.

JEFF LYNCH,

Defendant.

No. 2:23-cv-00536-DAD-DB (PC)

ORDER DECLINING TO ADOPT FINDINGS  
AND RECOMMENDATIONS DISMISSING  
THIS ACTION AS DUPLICATIVE

(Doc. No. 5)

Plaintiff Melvin A. Parker is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 4, 2023, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's complaint filed in *Parker v. Lynch*, 2:23-cv-00536-DAD-DB (E.D. Cal.) ("*Parker II*"), which encompassed a single Eighth Amendment claim brought against defendant Lynch, be dismissed as duplicative of the same claim asserted against defendant Lynch in *Parker v. Lynch*, 2:22-cv-02015-KJN (E.D. Cal.)<sup>1</sup> ("*Parker I*"). (Doc. No. 5 at 4–5.) Because the magistrate judge recommended dismissal of this action without leave to amend, the magistrate judge further recommended that plaintiff's request to proceed *in forma pauperis* be denied as moot. (*Id.* at 5.) The pending findings and recommendations were served on plaintiff and

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<sup>1</sup> *Parker v. Lynch*, 2:22-cv-02015-KJN (E.D. Cal.) is now cited as *Parker v. N. West*, 2:22-cv-02015-KJN (E.D. Cal.).

1 contained notice that any objections thereto were to be filed within twenty (20) days after service.  
2 (*Id.* at 6.) Plaintiff filed timely objections on April 17, 2023. (Doc. No. 7.)

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
4 *de novo* review of the case. Having carefully reviewed the entire file, the court declines to adopt  
5 the recommendation that plaintiff's complaint be dismissed as duplicative.

6 In *Parker I*, on March 28, 2023, the court dismissed plaintiff's Eighth Amendment claim  
7 against defendant Lynch with leave to amend. *Parker I*, Order, Doc. No. 24 (E.D. Cal. Mar. 28,  
8 2023).<sup>2</sup> However, on March 31, 2023, in *Parker I*, plaintiff signed a "Notice of Election"  
9 (hereinafter, the "Notice"), in which he consented to the dismissal of defendant Lynch from the  
10 action without prejudice. *Parker I*, Notice of Election, Doc. No. 26 at 1 (E.D. Cal. Apr. 12,  
11 2023). The pending findings and recommendations, issued on April 4, 2023, did not take into  
12 account the Notice because it was not filed on the docket until April 12, 2023. *See id.*

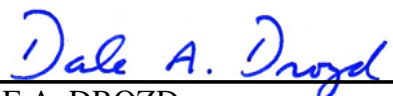
13 Because plaintiff consented to dismissing his Eighth Amendment claim brought against  
14 defendant Lynch without prejudice in *Parker I*, the same claim asserted against defendant Lynch  
15 in this action is no longer duplicative of any pending claim.

16 Accordingly,

- 17 1. The undersigned declines to adopt the April 4, 2023 findings and  
18 recommendations (Doc. No. 5); and
- 19 2. The matter is referred back to the assigned magistrate judge for further  
20 proceedings consistent with this order, including consideration of plaintiff's  
21 motion to proceed *in forma pauperis* (Doc. No. 2).

22 IT IS SO ORDERED.

23 Dated: **January 17, 2024**

24   
25 DALE A. DROZD  
UNITED STATES DISTRICT JUDGE

26 <sup>2</sup> On March 16, 2023, the court in *Parker I* had the case severed into two separate actions.  
27 *Parker I*, Order, Doc. No. 20 (E.D. Cal. Mar. 16, 2023). Plaintiff's claims regarding the sexual  
28 assault he allegedly suffered were moved to a separate action, but plaintiff's Eighth Amendment  
claim against defendant Lynch for failure to act in connection with plaintiff's attack by inmate  
Puckett was not. *See Parker I*, Order, Doc. No. 24 (E.D. Cal. Mar. 28, 2023).